

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Roger Clausen,

Civil No. 05-1269 (RHK/FLN)

Plaintiff,

ORDER

v.

Jo Anne B. Barnhart, Commissioner
of Social Security,

Defendant.

Magistrate Judge Franklin L. Noel has recommended that Plaintiff's Motion for Summary Judgment be denied and Defendant's Motion for Summary Judgment be granted. Defendant supports the recommendation and Plaintiff opposes it and has filed a "Response to Report and Recommendation" which the Court construes as "Objections."

The issue before Judge Noel, and now before this Court, is whether the Administrative Law Judge properly determined that Plaintiff has failed, without good cause, to cooperate in the ongoing disability review process. As stated by Judge Noel,

The facts in this matter compel agreement with the Commissioner's position. At each step of the continuing review process, employees and officials of the Social Security Administration have attempted to work with and convince Plaintiff to attend consultative examinations in order to enable an informed decision in his case as to whether he has made any medical improvement or not. Plaintiff has repeatedly failed to attend the scheduled examination, and has made no showing that such failures were due to "good cause." See 20 C.F.R. § 404.1518(b) (examples of good cause for failure to appear include: illness on the date of the scheduled examination or test; not receiving timely notice of the scheduled examination or test, or receiving no notice at all; being furnished incorrect or incomplete information about the physician involved or the time or place of the examination or test; or having had a death or serious illness occur in your immediate

family). Indeed, Plaintiff's proffered reason for not attending the consultative examinations, *i.e.*, fear for his well-being, is belied by the fact that the record shows he sought out and received medical treatment subsequent to October of 2001. (Tr. 535, 537-47.)

The "Objections" and the Report and Recommendation have been reviewed de novo. That review satisfies the undersigned that Judge Noel's factual determinations are fully supported by the record before him and that he applied controlling legal principles in reaching his recommended disposition.

Accordingly, and upon all the files, records and proceedings herein, **IT IS ORDERED:**

1. The Objections (Doc. No. 19) are **OVERRULED**;
2. The Report and Recommendation (Doc. No. 17) is **ADOPTED**;
3. Plaintiff's Motion for Summary Judgment (Doc. No. 11) is **DENIED**; and
4. Defendant's Motion for Summary Judgment (Doc. No. 14) is **GRANTED**.

Dated: July 11, 2006

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge